

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

INDUGO ASIFA WILLIAMS,

Defendant and Respondent.

A155125

(Marin County
Super. Ct. No. SC198975A)

MEMORANDUM OPINION¹

Appellant Indugo Asifa Williams was convicted of dissuading a witness and was sentenced to 16 months in prison in 2015. (Pen. Code, § 136.1, subd. (b).) He was released on parole and signed a form requiring him to “participate in continuous electronic monitoring, e.g., Global Positioning System (GPS) technology” as a condition of parole. He also signed a form indicating he was subject to “PC 290 GPS Conditions.”

On July 18, 2018, appellant was released from Marin County Jail after serving time on a parole violation. He called his parole office the next day (July 19, 2018) and the unit supervisor went and picked him up and drove him back to the parole office. He was directed to participate in two treatment groups, which he did. As soon as the second

¹ We resolve this case by memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1. (See also *People v. Garcia* (2002) 97 Cal.App.4th 847, 853–855.)

group ended, he left the building with another parolee. Parole officer Jeff Gill came to the building lobby after the second meeting to fit appellant with a GPS device, but was informed appellant had just left. Gill unsuccessfully tried to reach appellant by cell phone and searched the area where the other parolee had dropped appellant off. The following day, parole agents drove to appellant's stepfather's address and was told appellant had gone to the transit mall and was going to San Francisco. Gill, who had no other means of contacting appellant, secured a warrant for his arrest based on the failure to comply with the GPS requirement. The warrant was executed on July 25, 2018 when appellant went to the San Rafael Police station to register as a sex offender. According to Gill, appellant should not have departed the parole office on July 19 without having a GPS device placed on his person.

Following a contested hearing held August 13, 2018, appellant was found to be in violation of the terms of his parole by failing to have a GPS device affixed to his person. The court revoked appellant's parole, reinstated it on the same terms and conditions, and imposed a custodial sanction of 90 days.

Appellant argues on appeal that substantial evidence did not support the finding that he *willfully* violated his parole conditions, because the parole department let him go without placing a GPS device on him. We disagree.

Preliminarily, the issue appears to be moot, as more than 90 days have elapsed since appellant began serving the 90 days to which he was sentenced as a result of his parole revocation. Appellant has not identified any concrete collateral consequences that will flow from the parole violation and would therefore preclude a finding of mootness. (See *Spencer v. Kemna* (1998) 523 U.S. 1, 18; *People v. DeLeon* (2017) 3 Cal.5th 640, 646.) The case involves a factual dispute regarding the sufficiency of the evidence, not an issue of first impression that is likely to recur, and we would not be inclined to exercise our discretion to reach the issue. (Contrast, *People v. Hronchak* (2016) 2 Cal.App.5th 884, 888–889.)

We would also reject the claim on the merits. Whether to revoke parole lies within the trial court's "very broad discretion." (*People v. Rodriguez* (1990) 51 Cal.3d

437, 443.) The facts supporting revocation must be proved by a preponderance of the evidence. (*Id.* at p. 441; see also Pen Code § 3044, subd. (a)(5).) We review the order revoking parole for abuse of discretion (*People v. Butcher* (2016) 247 Cal.App.4th 310, 318) but review the court’s factual finding of a willful violation for substantial evidence. (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.) “The standard is deferential: ‘When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination’ ” (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681, italics omitted.)

To justify revocation, a parole violation must be willful. (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295.) In criminal law, willfulness requires “ ‘simply a purpose or willingness to commit the act . . .’ without regard to motive, intent to injure, or knowledge of the act’s prohibited character. [Citation.] The term[] impl[ies] that the person knows what he is doing, intends to do what he is doing, and is a free agent. [Citation.] Stated another way, the term ‘willful’ requires only that the prohibited act occur intentionally. [Citations.]” (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438; *People v. Hagedorn* (2005) 127 Cal.App.4th 734, 744, fn. 6.)

Though appellant does not claim he was unaware of the GPS requirement, he asserts it was up to the parole department to provide him with a device that complied and that his failure to secure such a device was not a willful violation of parole. The short answer is that the only reason appellant was not fitted with a GPS device is he immediately left the parole office after his meeting finished on July 19 and he could not thereafter be contacted. Appellant suggests it was the responsibility of the parole officers to provide a GPS device, but according to parole officer Gill, one would have been provided if only appellant had waited in the office for a few minutes after his class. Appellant’s impatience does not make his conduct less than “willful”—the circumstances constituting his parole violation were well within his control. (Contrast *People v. Galvan* (2007) 155 Cal.App.4th 978, 980 [no willful violation where defendant failed to timely

report to parole because he was deported]; *People v. Zaring* (1992) 8 Cal.App.4th 362, 379 [no willful violation where defendant late to court due to child care issues].)

Appellant relies on Gill's trip to the lobby as evidence he did not have a duty to go to Gill's office after the class to be fitted. But this at most gives rise to a factual dispute as to whether the failure to get fitted with a GPS device was a willful violation of parole conditions. It does not render the evidence of willfulness insufficient.

The judgment is affirmed.

NEEDHAM, J.

We concur.

SIMONS, ACTING P.J.

BURNS, J.

(A155125)